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MAIL STOP APPEAL BRIEF - PATENTS

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LHB 1509-154

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE  
BEFORE THE BOARD OF PATENT APPEALS AND INTERFERENCES

In re Application of	Confirmation No. 8765
Colin I'ANSON et al.	Group Art Unit 3625
Serial No. 09/829,436	Examiner: R. Rhode, Jr.
Filed: April 10, 2001	
For: SHOPPING ASSISTANCE SERVICE	

BRIEF ON APPEAL

Commissioner for Patents  
P.O. Box 1450  
Alexandria, VA 22313-1450

August 15, 2005

Sir:

Further to the Notice of Appeal filed June 14, 2005, in connection with the above-identified application on appeal, herewith is Appellants' Brief on Appeal. Please charge the statutory fee of \$500 to Deposit Account No. 08-2025.

To the extent necessary, Appellants hereby request any required extension of time not otherwise requested and hereby authorize the Commissioner to charge any required fees not otherwise provided for, including application processing, extra claims, and extension fees, to Deposit Account No. 08-2025.

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**I. Real Party in Interest**

The real party in interest is the Hewlett-Packard Development Company, L.P.

**II. Related Appeals and Interferences**

There are no related appeals and/or interferences.

**III. Status of Claims**

Claims 6, 8-10, 13, 17-20, 23-28, and 31-41 are canceled.

Claims 1-5, 7, 11, 12, 14-16, 21, 22, 29, 30, and 42-45 are rejected (see item 6 of the Office Action Summary included with the final rejection of March 14, 2005). Claims 1, 2, 4, 5, 7, 11, 12, 14-16, 21, 22, 29, and 30 are rejected under 35 U.S.C. §102(e) as being anticipated by Treyz (U.S. 6,587,835). Claim 3 is rejected under 35 U.S.C. §103(a) as being unpatentable over Treyz in view of Semple (U.S. 6,408,307). Claims 42-45 are rejected under 35 U.S.C. §103(a) as being unpatentable over Treyz in view of Obradovich (U.S. 6,542,812).

**IV. Status of Amendments**

There are no outstanding unentered amendments before the Examiner.

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**V. Summary of Claimed Subject Matter**

The claimed subject matter relates to a shopping assistance service system and method in which comparative-pricing data and availability data for items of a type of interest to a user at a location are categorized into zones of different physical accessibility of business premises from the user's location and delivered to the user (page 13, line 10-24; page 16, line 15, through page 17, line 22; and FIG. 7). For example, a "user can obtain comparative prices of an item of interest whilst out shopping" (page 10, lines 14 and 15).

The user acquires item data on items of interest by using a mobile device, e.g., by means of a capture transducer such as a hand-held scanner (page 13, line 26, through page 14, line 2). The user transmits the acquired item data to a service system for processing in accordance with a specified task (page 13, lines 14-20).

The service system receives the transmitted item data (page 13, lines 16-20, and page 14, line 18, through page 16, line 3), determines the location associated with the item data (specifically, location data may be provided as part of the data received by the system as described at page 15, lines 15-20), and processes the received item data to determine the item type (page 15, lines 3-13).

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The service system determines the identity of the item by processing the item data, e.g., by way of image processing such as bar-code reading, optical character recognition technology, or image matching, explicit data entry, etc. (page 15, lines 5-13).

After the service system performs processing of the item data, the service system delivers comparative pricing and/or availability information concerning items of the determined item type to the user. The service system delivers the information categorized into zones specifying a distance from a location focus (page 16, line 15, through page 17, line 22). The comparative pricing and/or availability data for an item is selected relative to one or more location foci according to certain distance criteria expressed in terms of zones. Zone categories include a zone defining an item: (1) within convenient walking distance of the location focus; (2) within convenient driving distance of the location focus; and (3) available from a virtual store over the Internet with delivery to the location focus (page 16, lines 17-20 and FIG. 7). Additionally, as depicted in the FIG. 7 embodiment, additional location foci may be used, e.g., the user's current location or the user's home location (page 16, line 25, through page 17, line 4).

The service system delivers the zone-categorized item information for display to the user. Example methods of providing the information for display to the user include: returning an HTTP

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response over the same data channel by which the service system received the original query; by e-mail to the user; by web page creation for user access; by printing and mailing to the user; by remote printing, and other feedback mechanisms (page 17, lines 6-17). As described above, the data provided to the user is selected relative to one or more location foci according to different zones.

**VI. Grounds of Rejection to be Reviewed on Appeal**

A. The anticipation rejection of claims 1, 2, 4, 5, 7, 11, 12, 14-16, 21, 22, 29, and 30 over Treyz.

B. The anticipation rejection of claim 4 over Treyz.

C. The anticipation rejection of claims 7, 22, and 30 over Treyz.

D. The obviousness rejection of claims 3 and 42-45 over Treyz in view of Semple or Obradovich. While claim 45 is not included in the heading of the rejection, the Examiner's remarks indicate that the rejection is applied to claim 45 in addition to claims 43 and 44.

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## VII. Argument

A. Treyz fails to anticipate all limitations of the claimed subject matter of claims 1, 2, 4, 5, 7, 11, 12, 14-16, 21, 22, 29, and 30.

The rejection of claims 1, 2, 4, 5, 7, 11, 12, 14-16, 21, 22, 29, and 30 under 35 U.S.C. §102(e) as being anticipated by Treyz was incorrect as a rejection based on 35 U.S.C. §102 requires every element of the claim to be included in the reference, either directly or inherently, and Treyz fails to identify all elements of claim 1. There are at least four reasons why Treyz fails to anticipate claim 1: improper and incorrect inherency; no categorization of proximity messages; non-disclosure of zone-categorization in figures; and incorrect claim interpretation.

Treyz describes a shopping assistance service for use with a handheld computing device 12 in which a user may obtain item information while located within a retail establishment 34 (FIGS. 1 and 2 and column 1, line 41, through column 4, line 10). The Examiner asserts that Treyz (column 11, lines 44-49; column 21, lines 25-35; column 22, lines 55-64; column 24, lines 13-15; column 39, lines 50-63; and FIGS. 26-28, 42, 45, 72, and 96) discloses delivering at least one of comparative-pricing and availability data for an identified item type for other business premises relative to

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the location of the user where the data is categorized into zones of different physical accessibility of the business premises from the user location as claimed in claim 1. However, the Examiner is incorrect.

1. The Examiner has continually persisted in setting forth an inherency argument unsupported by *Treyz*. The fact that a certain result or characteristic may occur or be present in the prior art is not sufficient to establish the inherency of that result or characteristic. The Examiner has failed to establish that the missing descriptive matter is necessarily present in the reference and that it would be so recognized by persons of ordinary skill in the art.

In order to rely upon a theory of inherency, the Examiner is required to provide a factual basis and/or technical reasoning reasonably supporting the determination that the allegedly inherent characteristic **necessarily** flows from the prior art teaching. See *Ex parte Levy*, 17 USPQ2d 1461, 1464 (BPAI 1990). "The mere fact that a certain thing **may** result from a given set of circumstances **is not sufficient.**" *In re Robertson*, 169 F.3d 743, 745, 49 USPQ3d 1949, 1950-51 (Fed. Cir. 1999) (emphasis added). "A claim limitation is inherent in the prior art if it is necessarily present in the prior art, not merely probably or possibly present." *Rosco*



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v. *Mirror Lite*, 304 F.3d 1373, 1380 (Fed. Cir. 2002). The Examiner has failed to support the inherency assertion regarding the categorization of item data into zones of different physical accessibility.

2. None of the Examiner-cited locations of Treyz discloses a categorization of data into zones of different physical accessibility. Column 11, lines 44-49, describes a shopping assistance service provided for in-store shoppers; column 21, lines 25-35, and column 22, lines 55-64, describe a user using a handheld computing device to access item information from a merchant using a wireless communication; and column 24, lines 13-15, describes an ability to locate a handheld computing device in a particular city or portion of a city. Column 39, lines 50-63, describes a handheld computer device displaying a proximity message to a user when the user comes in range of a local wireless transmitter/receiver in the proximity of a given merchant. The proximity messages are provided to the user only when the user is in range of a merchant's wireless transmitter/receiver and not delivered to the user based on comparative-pricing or availability data for an item of a type identified by the user nor based on zones of different physical accessibility. The Examiner has failed to identify categorization

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of the proximity messages into zones of different physical accessibility as claimed in claim 1.

3. FIGS. 26-28, 42, 45, 72, and 96 do not cure the deficiency of the text of Treyz. FIGS. 26-28 depict the provision of item information to a user via a display without categorizing the item information into zones of different physical accessibility. The Examiner asserts in conjunction with claim 5 that Figures 28 and 42 depict different physical accessibility zones (see page 5, lines 1-10, of the final Official Action mailed March 14, 2005). The assertion is dealt with in respect to claim 1 inasmuch as it applies to claim 1. In particular, the Examiner asserts that FIG. 28 discloses different physical accessibilities for locations in Boston, MA and Cambridge, MA; however, the Examiner relies on his own knowledge of the particular locations in the geographic region in order to make this particular accessibility determination. That is, the Examiner states that Cambridge "is across the river from Boston" and thereby has a different physical accessibility. However, the Examiner's statement is not based on the information depicted or described in Treyz, but rather based on the Examiner's own personal knowledge.

Figures 42 and 45 depict the provision of location information to a user via a display without categorizing the information into

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zones of different physical accessibility. With respect to Figures 42 and 45, the Examiner asserts that one of ordinary skill would understand that the Figure is depicting a walkable distance; however, this result does not necessarily flow from Treyz. That is, Treyz does not teach or disclose restricting the displayed map, e.g., as depicted in Figures 42 or 45, to walkable distances only or to displaying only stores within walking distance. In contrast, Treyz depicts in Figures 42 and 45 the location of a store on a map without regard to a zone of physical accessibility. Further, Figures 42 and 45 fail to provide either comparative-pricing data or availability data.

FIG. 72 depicts the provision of location history information to a user via a display detailing the user's recent location at different times, i.e., the user location is sorted based on time and not categorized based on zones of different physical accessibility. FIG. 96 depicts illustrative steps involved in displaying information to the handheld computing equipment of the user. None of the depicted steps include categorizing item information into zones of different physical accessibility. In contrast, step 916 describes displaying interactive promotional materials, list items, and other information to a user based on the user's location and not based on categorizing the item data into different physical accessibility zones. See, e.g., column 56, lines 29-32, "displaying

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information to handheld computing equipment 12 in a store based on the user's location...." For example, the above-described proximity messages may be displayed to the user without regard to zones of different physical accessibility.

4. The Examiner's "broad interpretation of the phrase 'categorizing into zones of different physical accessibility'" notwithstanding, Treyz fails to disclose any categorization of items into zones of different physical accessibility. The Examiner appears to be ignoring the plain claim language that the data is categorized into zones of different physical accessibility. Instead, the Examiner attempts to incorrectly construe the claim language to the display of either special access for handicapped or different physical location information. A broad reasonable interpretation of the claims consistent with the specification would not provide the Examiner's tortured interpretation. *In re Hyatt*, 211 F.3d 1367, 1372, 54 U.S.P.Q.2d 1664, 1667 (Fed. Cir. 2000). In the present claimed subject matter, as described extensively above, the data is categorized into zones of different physical accessibility, a feature not found in Treyz.

The Examiner's first flawed interpretation of the claim language, i.e., the display of special access for handicapped, is not even found in Treyz. Therefore, even assuming *arguendo* that if

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the interpretation is valid, the Examiner has failed to identify any such disclosure in the applied reference and the rejection should be reversed.

The Examiner's second flawed interpretation of the claim language (i.e., the display of different physical location information) is incorrect as discussed above with respect to the third reason and fails to account for the "categorized into zones" portion of the claim language. Nowhere does Treyz disclose categorization or grouping of different physical location information into zones. At best, Treyz describes the display of location information for an item of interest without categorizing the location information into zones.

In contrast to Treyz, the present claimed subject matter of zones for categorization is described at least at page 16, line 15, through page 17, line 4, of the instant specification and includes more than the display of location information for an item of interest. For example, the zones include "convenient walking distance," "convenient driving distance," and "available from a virtual store...with delivery to the location focus." Treyz fails to disclose the above-described zones or the categorization of data into zones of different physical accessibility.

Based on the foregoing, the Treyz shopping assistance service fails to categorize the received data including at least one of

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comparative-pricing data and availability data into zones of different physical accessibility as claimed in claim 1 and the rejection should be reversed.

Claims 2, 4, 5, 7, 11, 12, and 14-16 depend, either directly or indirectly, from claim 1 and are patentable over Treyz for at least the reasons advanced above with respect to claim 1 and the rejection should be reversed.

Claim 21 is patentable over Treyz for reasons similar to those advanced above with respect to claim 1 and the rejection should be reversed. Claims 22, 29, and 30 depend, either directly or indirectly, from claim 21 and are patentable over Treyz for at least the reasons advanced above with respect to claim 21 and the rejection should be reversed.

**B. Treyz fails to anticipate claim 4 of the present claimed subject matter.**

As described above, the rejection of claim 4 under 35 U.S.C. §102(e) as being anticipated by Treyz was incorrect as Treyz fails to categorize the item data returned to the user based on zones of different physical accessibility. The rejection of claim 4 is further incorrect as Treyz fails to disclose that the location is a predetermined location specified by the party responsible for sending the information to the service system in a user profile held

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by the service system, nor has the Examiner identified any such teaching in Treyz.

The Examiner admits that Treyz fails to disclose a user profile held by the service system and the Examiner has failed to identify any teaching in Treyz curing the admitted deficiency of Treyz. Further, the Examiner has failed to identify any teaching in Treyz regarding the location being a predetermined location specified by the party responsible for sending the information to the service system. The Examiner continues to make unsupported assertions regarding motivation of a person of ordinary skill in the art to extend Treyz to include a user profile and, as stated above, the Examiner fails to provide a reference providing any motivation to modify Treyz. The Examiner generically points to Obradovich (U.S. 6,542,812) as disclosing user profiles and providing motivation for one of ordinary skill in the art to modify Treyz. Unfortunately, the Examiner has not identified with any specificity any teaching or motivation in Obradovich teaching or motivating a person of ordinary skill in the art at the time of the present invention to so modify Treyz. Additionally, the asserted motivation of ensuring the party is in the correct location is still unclear to Appellants as the Examiner has failed to address appellant's request for clarification.

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Based on the foregoing and for the reasons advanced above with respect to claim 1, Treyz fails to anticipate claim 4 and the rejection should be reversed.

C. Treyz fails to anticipate claims 7, 22, and 30 of the present claimed subject matter.

As described above, the rejection of claim 7 under 35 U.S.C. 102(e) as being anticipated by Treyz was incorrect as Treyz fails to categorize the item data returned to the user based on zones of different physical accessibility. The rejection of claim 7 is further incorrect as Treyz fails to disclose the zones including a convenient walking zone around the location and a convenient driving zone around the location as claimed in claim 7.

FIGS. 28, 42, and 45 of Treyz depict location information without categorization of the information into zones of different physical accessibility. The Examiner asserts that the Figures depict walkable and drivable locations to the user; however, the Examiner appears to be making an inherency argument unsupported by Treyz.

In order to rely upon a theory of inherency, the Examiner is required to provide a factual basis and/or technical reasoning reasonably supporting the determination that the allegedly inherent characteristic *necessarily* flows from the prior art teaching. See



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*Ex parte Levy*, 17 USPQ2d 1461, 1464 (BPAI 1990). "The mere fact that a certain thing **may** result from a given set of circumstances **is not sufficient.**" *In re Robertson*, 169 F.3d 743, 745, 49 USPQ3d 1949, 1950-51 (Fed. Cir. 1999) (emphasis added). "A claim limitation is inherent in the prior art if it is necessarily present in the prior art, not merely probably or possibly present." *Rosco v. Mirror Lite*, 304 F.3d 1373, 1380 (Fed. Cir. 2002). The Examiner has failed to support the inherency assertion regarding the categorization of item data into zones of different physical accessibility. That is, categorization of item data into zones does not necessarily flow from the Treyz figures. For example, FIG. 28 fails to categorize the item data, instead the price comparison results are listed with no apparent order, and FIGS. 42 and 45 depict location information without categorization and also without providing comparative-pricing or availability data.

Based on the foregoing, the Treyz shopping assistance service fails to anticipate claim 7 and the rejection should be reversed.

Claims 22 and 30 are patentable over Treyz for reasons similar to those advanced above with respect to claim 7 and the rejection should be reversed.

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**D. Treyz in view of Semple or Obradovich fails to render obvious the claimed subject matter of claims 3 and 42-45.**

As described above, Treyz fails to anticipate claims 3 and 42-45 as Treyz fails to categorize the item data returned to the user based on zones of different physical accessibility. The combination of Treyz in view of Semple or Obradovich fails to render obvious claims 3 and 42-45 as the Examiner has failed to identify a teaching, suggestion, or motivation for combining Treyz with either Semple or Obradovich as asserted.

The final Office Action mailed March 14, 2005, contains assertions unsupported by either Treyz or Semple regarding the ability of shoppers to locate stores a reasonable distance from the current location and increasing probability that the shopper will return in the future for additional selections of products or services. Similarly, the same Office Action contains assertions unsupported by either Treyz or Obradovich regarding easing the burden of the user to have knowledge and location of items of interest for each shopping trip.

Further, the Examiner asserts without support that Obradovich discloses a method and system where a zone distance is input with respect to an item of interest and the zone distance is stored in a user profile. Obradovich includes no such disclosure of storage or

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input of a zone distance. At most, Obradovich describes "storage of user profiles including user preferences such as preferred types of restaurants, shops, entertainments, etc." (Obradovich at column 1, lines 62-64). Neither the Abstract nor Figure 11 provide the asserted zone distance information.

Based on the foregoing, Treyz in combination with either Semple or Obradovich fails to render obvious claims 3 and 42-45 and the rejection should be reversed.

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### VIII. Conclusion

For the extensive reasons shown above, Appellants respectfully requests the rejections be reversed.

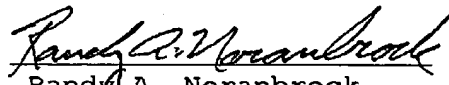
Each of the Examiner's rejections has been traversed. Appellant respectfully submits that all claims on appeal are considered patentable over the applied art of record. Accordingly, reversal of the Examiner's Final Rejection is believed appropriate and courteously solicited.

If for any reason this Appeal Brief is found to be incomplete, or if at any time it appears that a telephone conference with counsel would help advance prosecution, please telephone the undersigned, Appellants' attorney of record.

Reversal of the rejection is in order.

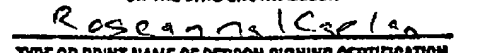

Respectfully submitted,  
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**IX. Claims Appendix**

**Claim 1:** A shopping assistance service method, comprising the steps of:

(a) capturing information about an item of interest at a business premises where the item is being offered by a user using a mobile device and sending the information, at the time of capture, to a service system over a communication link including a mobile radio infrastructure;

(b) at the service system:

(i) receiving the information,

(ii) determining a location associated with the information, and

(iii) processing the information to identify at least the type of item of interest; and

(c) delivering to said user at least one of comparative-pricing and availability data for items of the type identified in step (b) for other business premises relative to said location, said data being categorized into zones of different physical accessibility of the business premises concerned from said location, the delivering step being over a communication link originating at the service system and including a mobile radio infrastructure.

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**Claim 2:** A method according to claim 1, wherein said location is that of the business premises where the item is being offered.

**Claim 3:** A method according to claim 2, wherein said location is determined in one of the following ways:

by extraction from said information as specific data included by the sender;

by request to a location server of a mobile radio infrastructure through which said information has been sent to the service system from a mobile entity;

by reference to a database relating business identity to location, said information including the identity of the business where the item is on offer; or

by processing of image data included in said information.

**Claim 4:** A method according to claim 1, wherein said location is a predetermined location specified by the party responsible for sending the information to the service system in a user profile held by the service system.

**Claim 5:** A method according to claim 1, wherein step (b) includes determining multiple locations associated with said information, one of said locations being that of the business premises where the item is being offered and another said location

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being a predetermined location specified by said user either in a user profile held by the service system or in said information, and step (c) includes determining at least one of comparative-pricing and availability data for items of said identified type from business premises categorized into respective sets of zones of different physical accessibility for each said location.

**Claim 7:** A method according to claim 1, wherein said zones comprise:

- a convenient walking zone around said location; and
- a convenient driving zone around said location.

**Claim 11:** A method according to claim 1, wherein the processing of said information in step (b) includes one or more of the following operations:

- extracting data from specific data fields;
- analysing image data included in said information using OCR techniques;
- matching image data included in said information against stored image data;
- interpreting bar code image data included in said information;
- and
- applying speech recognition to recorded audio data included in said information.

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**Claim 12:** A method according to claim 1, wherein a specific task comprising one of delivering comparative-pricing data and delivering availability data is selected by the party responsible for sending the information in step (a), the selected task being explicitly specified in said information sent to the service system.

**Claim 14:** A method according to claim 1, wherein said output is made available to said user in one or more of the following ways:

by return over a data channel used to send the information to the service system in step (a);

by electronic mail to a electronic mail address specified in said information or in a user profile held by the service system in respect of said party;

by print out and mailing of the print out to a physical mail address specified in said information or in a user profile held by the service system in respect of said party; and

by making said output available at a web site accessible by said party.

**Claim 15:** A method according to claim 1, wherein said item of interest is a product on offer for sale or hire.

**Claim 16:** A method according to claim 1, wherein said item of interest is a service.



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**Claim 21:** A shopping-assistance service system, comprising:

a receiving subsystem for receiving from a user information about an item of interest on an offer at a business premises;

a processing subsystem for processing the information to identify at least the type of said item of interest;

a location-determining subsystem for determining a location associated with the received information;

a task subsystem for obtaining, for the type of item identified by the processing subsystem, at least one of comparative-pricing and availability data with respect to other business premises, the task subsystem being arranged to categorize said data according to zones of different physical accessibility of the business premises concerned from said location; and

an output subsystem for sending the categorized data to the user.

**Claim 22:** A system according to claim 21, wherein said zones comprise:

a convenient walking zone around said location; and

a convenient driving zone around said location.

**Claim 29:** A system according to claim 21, wherein said information further includes an indication of at least one further location specified by said user, the processing subsystem being

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arranged to identify said at least one further location from said information, and the task subsystem being arranged to determine at least one of comparative-pricing and availability data for items of said identified type from business premises categorized into respective sets of zones of different physical accessibility from each said location.

**Claim 30:** A system according to claim 29, wherein said zones comprise:

a convenient walking zone around said location; and  
a convenient driving zone around said location.

**Claim 42:** A method according to claim 1, wherein a zone distance is input with respect to an item of interest.

**Claim 43:** A method according to claim 1, wherein a zone distance is stored in a user profile.

**Claim 44:** A system according to claim 21, wherein a zone distance is input with respect to an item of interest.

**Claim 45:** A system according to claim 21, wherein a zone distance is stored in a user profile.